IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.454 OF 2007

In the matter of Companies Act, 1956;

And

In the matter of M/s.Nitco Paints Pvt. Ltd.

And

In the matter of Petition under Sections 434 & 439 of the Companies Act, 1956.

Visen Industries Limited .. Petitioners.

Mr.V.J.Brahmbhatta for petitioners.
Ms.Saumya Srikrishna i/b.Wadia Gandhy & Co. for respondent.

CORAM : A.M.KHANWILKAR, J.
DATE : 3rd December, 2007.

P.C.:

1. Heard Counsel for parties. Perused the pleadings and documents on record.

2. After considering rival submissions, I have no hesitation, taking a view that the dispute raised by the respondent company in its letter dated 1st March, 2005, followed by another letter dated 23rd March, 2005 was immediately after the goods were supplied by the petitioners, which according to the respondent company were defective and resulted in causing loss to the

respondent company. The petitioners on the other hand, except their bare words have not produced any record to suggest that they had contested that position, much less between March, 2005 till the institution of this petition in 2007. The dispute so raised by the respondent, prima-facie, seems to be bonafide. Even if the petitioners are right that the claim of the petitioners are rested on goods sold, supplied and delivered, even so, the petitioners cannot succeed in the present petition as the liability to pay the amount has been disputed by the respondent on account of the goods being defective. Indeed, the defective goods are valued only at Rs.2,90,195/- against Invoice dated 8th January, 2005. No dispute regarding quality, quantity and price has been raised by the respondent in relation to the other goods supplied by the petitioner in the sum of Rs.6,49,960/-. However, according to the respondent, the respondent has suffered loss to the extent of Rs.9.00 lacs on account of the defective goods. It is the stand of the respondent that until the said issue is resolved, the question of making payment of the outstanding dues to the petitioner, does not arise. Suffice it to observe that there is bonafide dispute between the parties with regard to the quality of goods supplied under Invoice dated 8th January, 2005. The fact whether the respondent has in fact

suffered loss to the extent of Rs.9.00 lacs is also a matter, which will have to be considered in appropriate proceedings.

3. Counsel for the petitioners vehemently argued that the respondent company without taking any prior approvals of the Competent Authority has proceeded to dispose of the company. For that, reliance is placed on news items appearing in Journal "Companies". He also submits that the Registrar of Companies has issued notice to the respondent for such infringement. The respondent, on the other hand, has filed reply before this Court and has stated on affidavit that the company has not been sold as claimed by the petitioners but it is only the business relating to paint, manufacturing has been sold to third party. Whether such a course is open to the respondent or not is a matter, which will have to be considered in appropriate proceedings.

4. Be that as it may, it needs to be observed that from the net worth of the company, it is seen that the total assets of the respondent company is to the extent of Rs.69.43 crores. Even if the claim of the petitioners is eventually required to be paid by the respondent, it is only in the sum of Rs.6,49,960/-. It is not as if the

respondent will be or is unable to pay its debt.

5. I am inclined to dismiss this petition also because the respondent has agreed to pay sum of Rs.4,41,372/-, which payment was offered on the earlier occasion to the petitioners but on condition that the petitioners should accept the same as full and final settlement of all the claims, which condition was not acceptable to the petitioners. However, now that payment will be offered with clear understanding that the petitioners will be free to pursue such other remedy in respect of disputed claim as may be permissible by Law. It is once again made clear that the offer of payment by the respondent company to the petitioners and the acceptance of the payment as aforesaid by the petitioners, both will be without prejudice to the rights and contentions of the respective parties.

6. Taking overall view of the matter, I am not inclined to admit this petition. The same is dismissed. It will be open to the petitioners to pursue its claim in appropriate proceedings as may be advised, which will be decided on its own merits and in accordance with law.

(A.M.KHANWILKAR, J.)